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FEDERAL EXPRESS

April 21, 1997

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

97-
888
~~97-981~~

Re: Citizens Telecommunications Company Of Tennessee L.L.C. And
Citizens Telecommunications Company Of The Volunteer State L.L.C.
For Establishment Of Alternative Universal Service Support Mechanisms

RECEIVED
TENN. REG. AUTH.
APR 22 PM 9 48
Suite 500
EXECUTIVE SECRETARY

Dear Mr. Waddell:

1400 16th Street, N.W.

Enclosed herewith for filing with the Authority are the original and ten copies of our Petition For Establishment Of Alternative Universal Service Support Mechanisms.

Washington, DC 20036

We have also enclosed a filing fee check in the amount of \$25.00.

office 202 332 5922

An extra copy of this filing is included for date stamping and return in the enclosed, postage prepaid envelope.

fax 202 483 9277

Copies of this filing are being served upon the parties in Tennessee Public Service Commission Case No. 95-02499.

Yours very truly,



Richard M. Tettelbaum

cc (w/encl.)

Wayne Lafferty

Parties--TPSC Case No. 95-02499

J. Michael Swatts

97-00888

BEFORE THE TENNESSEE REGULATORY AUTHORITY

IN RE: **Petition Of Citizens Telecommunications Company
Of Tennessee L.L.C. And Citizens Telecommunications
Company Of The Volunteer State L.L.C. For Establishment
Of Alternative Universal Service Support Mechanisms**

CASE NO.

**PETITION FOR ESTABLISHMENT OF ALTERNATIVE
UNIVERSAL SERVICE SUPPORT MECHANISMS**

Citizens Telecommunications Company of Tennessee L.L.C. and Citizens Telecommunications Company of the Volunteer State L.L.C. (the "Citizens LECs"), by their attorney, submit Their Petition For Establishment Of Alternative Universal Service Support Mechanisms, and, in support thereof, respectfully show as follows:

1. In its Order dated February 7, 1996 in its Docket No. 95-02499 Universal Service Proceeding (the "February 7, 1997 Universal Service Order"), the Tennessee Public Service Commission found:

As the costs of universal service are covered [on an embedded cost basis] by the current support mechanisms and are not under immediate competitive threats, no alternative universal service support mechanism is necessary at this time. Nevertheless, alternative support mechanisms may be desirable in order to encourage economic and fair competition, to prevent cross-subsidies among the incumbent companies' services, and to insure that universal service is adequately supported as competition grows. To this end, we will continue our examination of universal service costs and supports, with the goal of determining appropriate alternative universal support mechanisms, if needed, by early in 1997.¹

2. It is no longer correct that universal service costs can be covered by traditional implicit subsidy flows. The conclusion in the February 7, 1997 Universal Service Order that no alternative universal service mechanisms were necessary is legally flawed in light of Sections

¹ February 7, 1996 Universal Service Order, at p.2.

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254(b)(4) and (5), (d) and (f) of the Communications Act of 1934, as amended, 47 U.S.C. §§ Sections 254(b)(4) and (5), (d) and (f) (the “Communications Act”).² Further, the conclusion is, due to developments in the Tennessee telecommunications marketplace, no longer correct.

Changes In The IntraLATA Toll Market In Tennessee

3. The first marketplace development of concern to the Citizens LECs in continuing to carry out their universal service functions in this State is the termination, in the near future, of the implicit subsidy flow from intraLATA toll settlements. For the Citizens LECs this implicit universal service subsidy flow will end on June 30, 1997, at the earliest, and August 8, 1997, at the latest.

4. BellSouth Telecommunications, Inc. (“BellSouth”) has advised all independent local exchange carriers (“ILECs”) in Tennessee that it will terminate its preexisting intraLATA toll settlements agreement by June 30, 1997. It has commenced negotiations with the ILECs over its proposed Primary Carrier Plan (“PCP”) and related Infrastructure Sharing Agreement. The principal difference between the preexisting toll settlement plan and the proposed PCP is that the latter will not continue the historic arrangement whereby BellSouth pays an ILEC amounts for intraLATA toll call originations and terminations that are greater than the ILEC’s tariffed access charges. This differential, part of what is known as the Modified Revenue Distribution Fund (“MRDF”), is embodied in an agreement effective July 1, 1992, and represents, in the view of the Citizens LECs, an implicit subsidy flow to ILECs’ provision of universal service.

² These amendments to the federal Communications Act became effective the day after the February 7, 1996 Universal Service Order.

5. Even if BellSouth contemplated long term continuation of the MRDF and continuation of that arrangement was permissible under the universal service provisions of Section 254 of the Communications Act and T.C.A. §65-5-207,³ the Citizens LECs do not believe that they would continue to be eligible for continued receipt of MRDF funds. The reason for this is that the Citizens LECs will be converting to intraLATA equal access by August 8, 1997;⁴ thereafter, the sole intercarrier “settlements” arrangement that the Citizens LECs can participate in on intraLATA toll traffic is pursuant to their intrastate access services tariff.

6. Notwithstanding BellSouth’s intention to terminate the MRDF arrangements and the legal impediments to continuation of same, the amount of MRDF implicit subsidy flows to ILECs represents critical universal service support. The loss of those dollars could have a devastating impact upon the ability of the Citizens LECs to provide universal service at “affordable” rates. These universal service flow dollars must continue, albeit in a new form that complies with state and federal law.

7. The TRA must, as a first step, institute a proceeding at the earliest opportunity for identification of the amount of dollars represented by the implicit subsidy flow inherent in the MRDF; quantify the impact upon ILEC provision of universal service that would follow from a loss of that implicit subsidy flow; and design an explicit fund, to which all carriers contribute, to replace those dollars.

³ The Citizens LECs do not believe, as a matter of law, that the MRDF can be legally continued.

⁴ See Joint Petition of Citizens Telecommunications Company of Tennessee L.L.C. and Citizens Telecommunications Company of the Volunteer State L.L.C. for Approval of an IntraLATA Toll Dialing Parity Implementation Plan, Docket No. 97-00275.

Changes In Extended Area Service Arrangements

8. In addition to advising the Tennessee ILECs of its intention to cancel the MRDF agreement for intraLATA toll settlements, BellSouth has advised of its intention to cancel the preexisting “bill-and-keep” settlements arrangements⁵ for ILEC-Bell Extended Area Service (“EAS”) agreements. The proposed replacement agreements would have the parties compensate each other, on a usage-sensitive basis, for the reciprocal transport and termination of each other’s local telecommunications traffic traversing the pertinent EAS routes.

9. The Citizens LECs acknowledge that the proposed replacement of the ILEC-Bell EAS bill-and-keep arrangements with usage-sensitive reciprocal transport and termination arrangements is a permissible outcome under Sections 251(b)(5) and 252(d)(2) of the Communications Act. The Citizens LECs reserve their rights to challenge and, if necessary, seek arbitration pursuant to Section 252(b) of the Communications Act over any EAS settlements issue that it cannot negotiate to resolution with BellSouth.

10. The core issue at the heart of the ILEC-Bell EAS settlements issue is that of universal service funding. To the extent that EAS falls within the universal service umbrella, any LEC shortfall in recovery of underlying costs should be borne by an extrinsic funding source support of which is borne by all telecommunications carriers. Both State and Federal law already contemplate such an extrinsic funding source -- universal service funds.

⁵ “[B]ill-and-keep arrangements are those in which neither of the two interconnecting carriers charges the other for the termination of local telecommunications traffic that originates on the other’s network.” Section 51.713(a) of the Rules of the Federal Communications Commission.

11. The Citizens LECs believe that, to the extent that a LEC's provision of universal service, whether wholly within its own exchange areas or within an EAS construct, is priced below cost, the shortfall must be made up from an intrinsic universal service fund. If payment of terminating compensation to another LEC in an EAS arrangement adds incrementally to that shortfall, additional universal service funding is both appropriate and a legal requirement. One alternative, continuation of bill-and-keep arrangements, casts the entire incremental cost burden upon the terminating LEC and is, in all likelihood, in violation of statutory requirements for equitable and nondiscriminatory universal service funding. The second alternative, although economically correct but unpalatable to regulators, is to allow the originating LEC to increase its end user rates and/or allow usage sensitive end user pricing to absorb the incremental costs.

Conclusion

The foregoing developments in BellSouth-ILEC relationships in Tennessee dictate commencement of a universal service proceeding at the earliest possible moment. The TRA must undertake a thoroughgoing, generic universal service proceeding to accomplish what the former Tennessee Public Service Commission postponed -- compliance with T.C.A. § 65-5-207(b).⁶

WHEREFORE, Citizens Telecommunications Company of Tennessee L.L.C. and Citizens Telecommunications Company of the Volunteer State L.L.C. urge the TRA to initiate a

⁶ T.C.A. § 65-5-207(b) requires the TRA to:

determine the cost of providing universal service, determine all current sources of support for universal service and their associated amounts, identify and assess alternative support mechanisms, and determine the need and timetable for modifying current universal service support mechanisms. The Commission shall issue its decision in the universal service proceeding prior to January 1, 1996.

proceeding at the earliest practicable moment to establish alternative universal service support mechanisms.

Respectfully submitted,

CITIZENS TELECOMMUNICATIONS
COMPANY OF TENNESSEE L.L.C.

and

CITIZENS TELECOMMUNICATIONS
COMPANY OF THE VOLUNTEER
STATE L.L.C.

By:

A handwritten signature in black ink, appearing to read 'RM Tettelbaum', written over a horizontal line.

Richard M. Tettelbaum, Associate General
Counsel

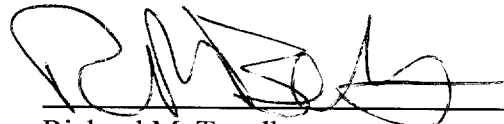
Citizens Communications Company
Suite 500, 1400 16th Street, N.W.
Washington, D.C. 20036

(202) 332-5922

April 21, 1997

Certificate of Service

I Richard M. Tettelbaum, Associate General Counsel of Citizens Utilities Company, certify that copies of the foregoing "Petition for Establishment of Alternative Universal Service Support Mechanisms" have been served upon the following parties in the Tennessee Public Service Commission Case No. 95-02499, via U.S. Mail, on this 21st day of April, 1997.


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